IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

ELSMERE PARK CLUB, L.P., a	
Delaware limited partnership,) · · ·
Plaintiff,)
v.	Civil Action No. 04-1321-SLR
TOWN OF ELSMERE, a Delaware Municipal corporation, ELLIS BLOMQUIST, EUGENE BONEKER, and JOHN GILES,)))) <u>JURY TRIAL DEMANDED</u>
Defendants.))

APPENDIX TO PLAINTIFF'S ANSWERING BRIEF IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE TO EXCLUDE THE EXPERT REPORT AND TESTIMONY OF DAVID J. WILK AND PLAINTIFF'S OPENING BRIEF IN SUPPORT OF ITS MOTION TO STRIKE EXHIBIT A ATTACHED TO THE 9/22/05 AFFIDAVIT OF LIZA H. SHERMAN

Dated: October 14, 2005

KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP

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1.

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- PRELIMINARY COST ESTIMATE
- 2. MOLD REMEDIATION

3. OVERVIEW

The Ferwick Park Apartments are located in the Town of Elsmere, Delaware. The complex consists of 38 apartment buildings with four apartments per building. As originally constructed, each building also contained a fifth apartment that was partially below grade. A flood in 1989, an possibly an earlier flood in 1966, flooded these basement apartments. The Town prevented habitation of all of these partially subgrade units after the 1989 flood. Later, in approximately 1996, the Town required the owner to seal the windows of the basement apartments with masonry and to fasten plywood over the doors of these apartments.

In addition to the water damage from the floods, there have been a number of other instances of routine water damage from roof and window leaks, air conditioner condensate damage and plumbing leaks. A number of the plumbing leaks appear to have damaged the basements.

Building management reports that inspections in the mid-1990s, and again in the late 1990s, addressed concerns regarding existing water damage. Accordingly, it is possible that all impacts presently observed in the buildings are attributable to damage that has occurred in the last few years.



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Water & Moisture Damage

Whenever building materials become water-damaged and go untreated, the possibility of mold growth on or within the materials is high. The current, accepted means of dealing with water-damaged building materials is to remove and replace damaged wallboard and to clean and dry any other materials such as carpet, wood structural members, masonry and non-porous furnishings within 24 to 48 hours.

4. BUILDING ASSESSMENTS

An initial assessment of each building was conducted to determine its fitness for occupancy, the need for maintenance, the need for mold remediation and the potential for occupant exposure to elevated airborne mold spores.

Visual Inspections

Air monitoring, visual inspections and photo documentation were conducted on all apartments and in the former basement apartments. The visual inspection was used to determine the extent of surface water damage or area covered by surface mold contamination. This information was used to determine the means by which the damage would be remedied. The mold-damaged areas were ranked for remediation using the New York City Department of Health Guidelines on Assessment and Remediation of Fungi in Indoor Environments.

Individual Building Histories

Maintenance records have been reviewed to ascertain where water damage, other than the two floods mentioned, might have impacted the building materials in any of the apartments. As noted above, additional sources of water damage include roof leaks, plumbing leaks and air conditioner condensate.

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5. REMEDIATION

Based on the work completed, we have assumed that all buildings will have the basements remediated. In addition to the mold remediation, we have assumed that each basement will also have the vinyl asbestos tile (VAT) removed as a result of the water damage. (These assumptions are subject to modification if additional investigation establishes no water damage to the drywall and or floors from the prior floods, leaks, etc.) There could be a reduction in the cost of remediation by awarding the work to one contractor who can complete both the mold remediation and the asbestos abatement work.

Additional remediation is recommended in a limited number of above-grade apartment units, based on observed water damage or air sampling results. The remediation will consist either of (i) HEPA vacuuming in units with no observed water damage but air sampling results which exceed results from outside the unit, and which indicate a potential source in the basement or (ii) limited removal and replacement of wallboard with apparent water damage. In the latter case, after removal and prior to replacement of wallboard, the area behind the drywall will be inspected to defermine whether any additional impacts are present, and if so, the appropriate response. Any damage behind the wallboard is not known at present, and therefore is not included in this cost estimate. One building had a mold type which is associated with a wood source rather than a drywall source. The wood in that building will be investigated during remediation to determine potential impacts to the wood. In addition, certain bathrooms and kitchens have mold damage. All buildings will be subject to clearance sampling. Additional physical inspections and/or remediation may be needed if clearance is not achieved, The additional cost of this is not included below. A list of the buildings and apartments are listed in Attachment I.

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A preliminary cost estimate, based on what has been learned to date is as follows:

TOTAL ESTIMATE \$ 231,200

Note carefully that the above do not include restoration costs for replacement of building components after remediation is completed nor any structural repairs found to be needed when walls or ceilings are opened up. In addition, it is essential that all spaces continue to be heated and maintained without water leakage, otherwise, costs will increase due to expanded remedial requirements.

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ATTACHMENT 1 LIST OF BUILDINGS AND APARTMENTS

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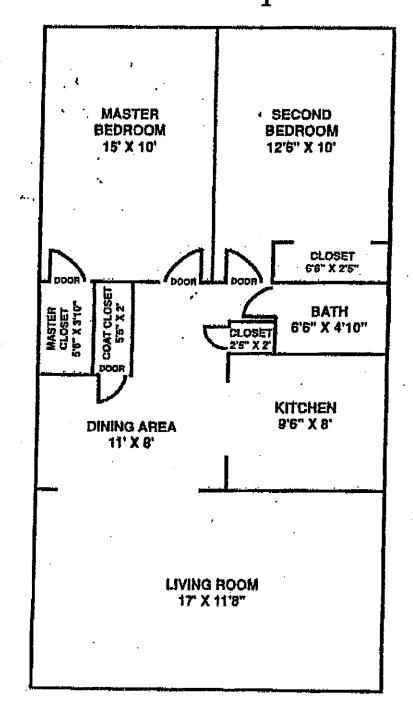
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APARTMENT(s) THAT NEED REMEDIATED
BUILDING # & UNIT(s)
1400 basement, unit 4
1481 basement, unit 4
1402 basement
1403 basement
1404 basement
1405 basement, unit 2 & 5
1406 basement
1407 basement
1408 basement, unit 2,3,4 & 5
1409 basement
1411 basement, unit 5
· 1413 basement, unit 5
1415 basement
1417 basement
1419 basement
1421 basement
1423 basement
1349 basement, unit 3
1351 basement
1353 basement, unit 2,3,4 & 5
1355 basement, unit 2,3,4,& 5
1357 basement, unit 2
1401 basement
1403 basement
1405 basement, unit 4
1407 basement, unit 4
1409 basement
1501 basement
1503 basement
1505 basement
1507 basement
1509 basement
1511 basement, unit 2 & 3
Lia Adaminated with the a
1400 basement
1401 basement, unit 3
1403 basement, unit 2
1405 basement
1407 basement, unit 5

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RT Environmental Services, Inc.

TELECOMMUNICATION COVER SHEET

/>	PROJECT#_ & G #3/10
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COMPANY:	8
LOCATION:	
FAX PHONE# 215- 568-6603	
FROM: Wal	
DATE: 6/25 TIME OF TRANSMISSI	ION:
ORIGINAL WILL FOLLOW VIA:	RT's SCOPE OF SERVICES - REAL ESTATE ENVIRONMENTAL SITE ASSESSMENTS - UNDERGROUND & ABOVE GROUND TANKS - REMEDIAL ACTION
THESE ARE TRANSMITTED AS CHECKED BELOW FOR APPROVAL FOR YOUR USE FOR BIDS DUE FOR REVIEW AND COMMENT BY AS REQUESTED OTHER	- RISK BASED CORRECTIVE ACTION - BROWNFIELDS SITES - ENVIRONMENTAL ENGINEERING - EXPERT WITNESS SERVICES - HEALTH & SAFETY SERVICES - ASBESTOS & LEAD BASED PAINT - RISK ASSESSMENTS - AIR AND WASTEWATER
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MESSAGE:	



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TECHNICAL SCOPE FOR THE REMOVAL OF MOLD IMPACTED AND ASBESTOS-CONTAINING MATERIALS

FOR

FENWICK PARK APARTMENTS ELSMERE, DELAWARE

PREPARED FOR:

ELSMERE PARK CLUB, L.P.

PREPARED BY:

RT ENVIRONMENTAL SERVICES, INC.
AND
SOVEREIGN ENVIRONMENTAL GROUP, INC.

NOVEMBER 2002

FIT Environmental Services, Inc.

DESCRIPTION OF WORK

VINYL ASBESTOS TILE ABATEMENT

This project will involve the abatement by removal of damaged vinyl asbestos tile in basement apartments at the Ferwick Park Apartments in Elsmere, DE.

 700 square feet (present estimate) of vinyl asbestos tile (VAT) located in the basement apartments of each building.

The project involves the abatement by removal of the vinyl asbestos tile materials which are in poor condition in basement apartment units or which need to be abated by removal to facilitate mold abatement activities.

The Work will be performed in full accordance with all relevant Federal, State, and Local laws and regulations, including but not limited to the NESHAP provisions of the Clean Air Act, Delaware laws and regulations governing asbestos abatement work, all Federal OSHA asbestos and construction safety standards.

DESCRIPTION OF WORK - MOLD ABATEMENT

This section describes areas where mold remediation work is to be performed and lists areas which will receive special protection during the remediation work. This work will be conducted following all Federal, State and Local ordinances, regulations and rules pertaining to mold, including its storage, transportation and disposal. This project will be conducted in accordance with the New York City Department of Health Guidelines.

The work will include:

- Use of vacuum cleaners equipped with HEPA filters to collect all debris and dust;
- Wet methods, or wetting agents, to control employee exposures during mold handling, mixing, removal, cutting, application, and cleanup; and
- Prompt clean up and disposal of wastes and debris contaminated with mold in leaktight containers.

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Remediation shall include removal of mold-containing building materials in the following matter:

- Thirty-eight (38) basement apartments shall be remediated using Level III procedures specified herein.
- Sixteen (16) upper floor apartments shall be remediated using Level II procedures specified herein.

DESCRIPTION OF WORK - SEWAGE RELEASE ABATEMENT

Certain areas of the complex (including 1409 Maple & 1357 Maple) are impacted by releases of wastewater from leaking plumbing fixtures and sewer piping. Visual inspection of the apartments as of early October 2002 did not reveal any areas of wastewater releases from sanitary wastewater fixtures and piping; all leakage found was from kitchen and bathroom sink fixtures. Leakage found was into the same areas scheduled for mold and/or asbestos abatement. Should any new areas be found during the execution of the work where sanitary wastewater releases impacted building materials, causing a potential hazard, proper work practices will be implemented during execution of the removal of any and all sewage release damaged building materials.

To assure maximum control of mold spores during removal of building materials, a "top down" sequence of abatement will be used. Within each building, materials shall be removed and abated from the uppermost units, to the first floor units to the basement. The reason for this protocol is to maintain negative pressure air control, and the ability to segregate work areas as the work proceeds and building materials including wall board, insulation, wood framing or other building materials are removed for abatement purposes. If any conditions are found after building materials are removed, the ENVIRONMENTAL CONSULTANT shall be notified and shall issue instructions on the scope of work prior to any wood removal.

Additional work sequence provisions include the following:

 Movable objects shall be removed from the work area prior to initiation of abatement activities. 11/25/2002 17:08

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- Prepare and isolate the WORK area and establish necessary barriers, decon facilities and waste staging areas to achieve full containment.
- Perform removal utilizing required full containment procedures.

Background, project, clearance sampling, and final inspection shall be provided by ENVIRONMENTAL CONSULTANT.

Final tear down of critical barriers and isolations barriers will take place only upon approval of ENVIRONMENTAL CONSULTANT.

REMOVAL DETAILS

- A. Asbestos-Containing Material Abatement:
 - Removal of asbestos-containing material within the basement apartment units shall be performed using full-containment techniques and an attached 3-stage decontamination unit where possible. Negative air shall be provided using HEPA (High Efficiency Particulate Air) filtration systems and discharged to the outside of the building. The work area shall be prepared and engineering controls installed in accordance with Section 2 of the Technical Specifications.
- В.. All visual inspections and final clearance air sampling shall be conducted by the ENVIRONMENTAL CONSULTANT.

AIR SAMPLING METHODOLOGY

After the containment area passes the final visual inspections, final clearance air samples shall be collected.

The sampling, analysis, and release criteria for final clearance shall be in accordance with the phase contrast microscopy (PCM NIOSH 7400) protocol, or TEM if required locally or considered appropriate give the project type.

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MOLD ABATEMENT

We have assumed that the apartments shall be unoccupied for the remediation to facilitate efficient work practices.

Appropriate caution signs shall be posted at the entrance to each work area and the waste storage area at all times during the mold project. A work area is an entire building, floor, or a portion of a floor where work is being conducted at that time.

An enclosure shall be constructed around the controlled area. The enclosures shall be maintained under negative pressure using HEPA-filtered air filtration device (AFD). AFD's shall be exhausted to the outside of the building.

Stationary Items shall be decontaminated if visibly mold-contaminated by wet wiping and/or HEPA vacuuming. All movable objects shall be relocated from the controlled area.

Disable HVAC or any other system bringing air into, out of, or through the Work Area. Disable system by lockout, disconnecting wires, removing circuit breakers by lockable switch and/or other positive means that will prevent accidental premature restarting of equipment.

WATER DAMAGE / MOLD ABATEMENT

In all situations, the underlying cause of water accumulation will be rectified to the extent possible. Any initial water infiltration shall be stopped and cleaned immediately. The ENVIRONMENTAL CONSULTANT shall be notified of any apparent needs for building repairs, which become apparent during the course of the work.

LEVELS

Five different levels of abatement are described herein. The size of the area impacted by fungal contamination determines the level. The levels below are based on professional judgment and practicality. The goal of remediation is to remove or clean mold impacted materials in a way that prevents the emission of fungi and dust contaminated with fungi from leaving a work area and entering an occupied or non-abatement area, while protecting the health of workers performing the abatement.

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The listed remediation levels and methods are not meant to exclude other similarly effective methods. Any changes to the remediation methods listed in these guidelines, however, should be carefully considered prior to implementation. Non-porous (e.g., metals, glass, and hard plastics) and semi-porous (e.g., wood, and concrete) materials that are structurally sound and are visibly moldy can be cleaned and reused. Cleaning shall be completed using a detergent solution. Porous materials such as ceiling tiles and insulation, and wallboards with more than a small area of contamination shall be removed and discarded. Porous materials (e.g., wallboard, and fabrics) that can be cleaned, can be reused, but shall be discarded when possible.

MATERIAL & BIOCIDES

All materials to be reused should be dry and visibly free from mold. The use of gaseous, vaporphase, or aerosolized biocides for remedial purposes is not recommended. Any biocides proposed to be used by the CONTRACTOR shall be approved in advance by the ENVIRONMENTAL CONSULTANT.

LEVEL I: SMALL ISOLATED AREAS (10 sq. ft or less) - e.g., ceiling tiles, small areas on walls.

Persons performing this work shall have training performed as part of a program to comply with the requirements of the OSHA Hazard Communication Standard (29 CFR 1910.1200).

Respiratory protection (e.g., N95 disposable respirator), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134), is recommended. Gloves and eye protection are required.

The work area shall be unoccupied.

Containment of the work area is not necessary. Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are recommended.

Contaminated materials that cannot be cleaned shall be removed from the building in a sealed plastic bag.

The work area and areas used by remedial workers for egress shall be cleaned with a damp cloth and/or mop and a detergent solution.

All areas should be left dry and visibly free from contamination and debris.

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LEVEL II: MID-SIZED ISOLATED AREAS (10 - 30 sq. ft.) - e.g., individual wallboard panels.

Persons performing the work shall have training performed as part of a program to comply with the requirements of the OSHA Hazard Communication Standard (29 CFR 1910.1200).

Respiratory protection (e.g., N95 disposable respirator), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134), is recommended. Gloves and eye protection are required.

The work area shall be unoccupied.

The work area shall be covered with a plastic sheet(s) and sealed with tape before remediation, to contain dust/debris.

Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are required.

Contaminated materials that cannot be cleaned shall be removed from the building in sealed plastic bags.

The work area and areas used by remedial workers for egress should be HEPA vacuumed (a vacuum equipped with a High-Efficiency Particulate Air filter) and cleaned with a damp cloth and/or mop and a detergent solution.

All areas should be left dry and visibly free from contamination and debris.

LEVEL III: LARGE ISOLATED AREAS (30 - 100 square feet) - e.g., several wallboard panels.

The following procedures are required:

Personnel trained in the handling of hazardous materials and equipped with respiratory protection, (e.g., N95 disposable respirator), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134), is recommended. Gloves and eye protection are required.

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The work area and areas directly adjacent shall be covered with a plastic sheet(s) and taped before remediation, to contain dust/debris.

Seal ventilation ducts/grills in the work area and areas directly adjacent with plastic sheeting.

The work area and areas directly adjacent shall be unoccupied.

Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are required.

Contaminated materials that cannot be cleaned shall be removed from the building in sealed plastic bags.

The work area and surrounding areas shall be HEPA vacuumed and cleaned with a damp cloth and/or mop and a detergent solution.

All areas should be left dry and visibly free from contamination and debris.

If abatement procedures are expected to generate a lot of dust (e.g., abrasive cleaning of contaminated surfaces, demolition of plaster walls) or the visible concentration of the fungi is heavy (blanket coverage as opposed to patchy), then remediation procedures for Level IV shall be followed.

LEVEL IV: EXTENSIVE CONTAMINATION (greater than 100 contiguous square feet in an area)

The following procedures are required:

Personnel trained in the handling of hazardous materials equipped with:

- Full-face respirators with high efficiency particulate air (HEPA) cartridges
- Disposable protective clothing covering both head and shoes
- Gioves

Containment of the affected area:

- Complete isolation of work area from occupied spaces using plastic sheeting sealed with duct tape (including ventilation ducts/grills, fixtures, and any other openings)
- The use of an exhaust fan with a HEPA filter to generate negative pressurization.
- Airlocks and decontamination room.

Contaminated materials that cannot be cleaned shall be removed from the building in sealed plastic bags. The outside of the bags shall be cleaned with a damp cloth and a detergent solution or HEPA vacuumed in the decontamination chamber prior to their transport to uncontaminated areas of the premises.

The contained area and decontamination room shall be HEPA vacuumed and cleaned with a damp cloth and/or mop with a detergent solution and be visibly clean prior to the removal of isolation barriers.

Air monitoring shall be conducted prior to reoccupancy by the ENVIRONMENTAL CONSULTANT to determine if the area is fit to reoccupy.

LEVEL V: REMEDIATION OF HVAC SYSTEMS (A Small Isolated Area of Contamination {<10 square feet} in the HVAC System

Persons performing this work shall have training performed as part of a program to comply with the requirements of the OSHA Hazard Communication Standard (29 CFR 1910.1200).

Respiratory protection (e.g., N95 disposable respirator), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134), is recommended. Gloves and eye protection should be worn.

The HVAC system shall be shut down prior to any remedial activities.

The work area shall be covered with a plastic sheet(s) and sealed with tape before remediation, to contain dust/debris.

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Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are required.

Growth supporting materials that are contaminated, such as the paper on the insulation of interior lined ducts and filters, shall be removed. Other contaminated materials that cannot be cleaned shall be removed in sealed plastic bags.

The work area and areas immediately surrounding the work area shall be HEPA vacuumed and cleaned with a damp cloth and/or mop and a detergent solution.

All areas shall be left dry and visibly free from contamination and debris.

Biocides may be recommended by HVAC manufacturers for use with HVAC components, such as, cooling coils and condensation pans. HVAC manufacturers shall be consulted with respect to the products they recommend for use in their systems.

Areas of Contamination (>10 square feet) in the HVAC System The following procedures are recommended:

- -Personnel trained in the handling of hazardous materials equipped with:
 - -Respiratory protection (e.g., N95 disposable respirator), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134), is recommended.
 - -Gloves and eye protection
 - -Full-face respirators with HEPA cartridges and disposable protective clothing covering both head and shoes should be worn if contamination is greater than 30 square feet.

The HVAC system shall be shut down prior to any remedial activities.

Containment of the affected area:

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- -Complete isolation of work area from the other areas of the HVAC system using plastic sheeting sealed with duct tape.
- -The use of an exhaust fan with a HEPA filter to generate negative pressurization.
- -Airlocks and decontamination room if contamination is greater than 30 square feet.
- -Growth supporting materials that are contaminated, such as the paper on the insulation of interior lined ducts and filters, shall be removed. Other contaminated materials that cannot be cleaned shall be removed in sealed plastic bags. When a decontamination chamber is present, the outside of the bags shall be cleaned with a damp cloth and a detergent solution or HEPA vacuumed prior to their transport to uncontaminated areas of the building.
- -The contained area and decontamination room shall be HEPA vacuumed and cleaned with a damp cloth and/or mop and a detergent solution prior to the removal of Isolation barriers.
- -All areas shall be left dry and visibly free from contamination and debris.
- -Air monitoring shall be conducted by the ENVIRONMENTAL CONSULTANT prior to reoccupancy with the HVAC system in operation to determine if the area(s) served by the system are fit to reoccupy.
- -Biocides may be recommended by HVAC manufacturers for use with HVAC components. such as, cooling colls and condensation pans. HVAC manufacturers shall be consulted for the products they recommend for use in their systems.

Mold waste shall be deposited as soon as practical at a regulated waste disposal site.

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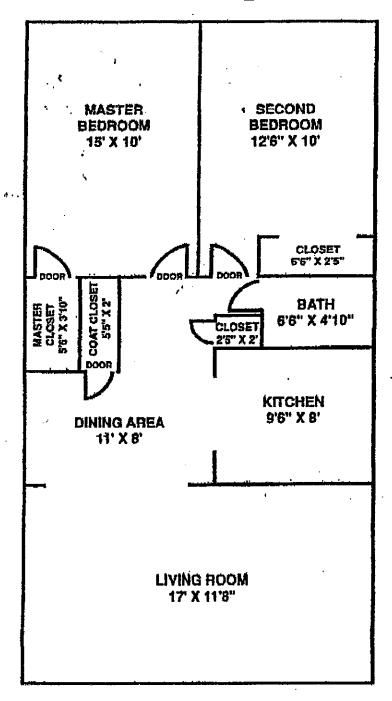
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ATTACHMENT 1 SCHEDULE OF MOLD ABATEMENT/REMEDIATION BY BUILDING

	APARTMENT(s) THAT NEED REMEDIATED
STREET	BUILDING # & UNIT(s)
CYPRESS	1400 basement, unit 4
	1401 basement, unit 4
	1402 basement
	1403 basement
	1404 basement
	1405 basement, unit 2 & 5
	1406 basement
	1407 basement
· · · · · · · · · · · · · · · · · · ·	1408 basement, unit 2,3,4 & 5
<u> </u>	1409 basement
	1411 basement, unit 5
	1413 basement, unit 5
	1415 basement
	1417 basement
	1419 basement
	1421 basement
	1423 basement
MAPLE	1349 basement, unit 3
····	1351 basement
····	1353 basement, unit 2,3,4 & 5
	1355 basement, unit 2,3,4,& 5
	1357 basement, unit 2
	1401 basement
· · · · · · · · · · · · · · · · · · ·	1403 basement
	1405 basement, unit 4
	1407 basement, unit 4
	1409 basement
	1501 basement
· · · · · · · · · · · · · · · · · · ·	1503 basement
	1505 basement
	1507 basement
···	1509 basement
	1511 basement, unit 2 & 3
· ·	The state of the s
SYCAMORE	1400 basement
1111 11	1401 basement, unit 3
	1403 basement, unit 2
	1405 basement
	1407 basement, unit 5

Elsmere Park Apartments



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ATTACHMENT 2
AREAS OF WASTEWATER RELEASE

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Area 1-1409 Maple

Kitchen Sink Leak

Repaired & Cleaned by Maintenance staff > 1 year ago

Area 2-1357 Maple

Recent...will be taken care of as part of this Scope.

(MON) NOV 25 2002 18:53

KLEHR HARRISON PHILADELPHIA

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KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP

ATTORNEYS AT LAW 260 S. BROAD STREET

PHILADELPHIA, PA 19102-5003

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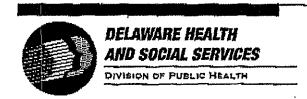
COMMENTS:

Please look at the e-mail regarding this fax.

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DISEASE PREVENTION AND CONTROL

January 16, 2003

Mr. Gary Brown, P.E. President RT Environmental Services 215 West Church Rd King of Prussia, PA 19406

Dear Mr. Brown:

Thank you for letter of January 13, responding to our comments on the remediation plan for Elsmere Apartments. Please note that we are not an approval authority but we appreciate your sharing of the work plan with us. We are satisfied that our questions were addressed and are encouraged that you plan to begin remediation quickly.

By following the New York City Health Department Guidelines for Mold Remediation, the "industry standards" will be met.

If future questions arise on your part, we are more than happy to discuss them with you. We can be reached at 302-744-4540.

Sincerely.

Gerald Liewellyn, Ph.B.

Branch Chief & Toxicologist

Environmental Health Evaluation & Toxicology Branch

pc: John S. Giles, Jr.

GILES-14

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MORRIS JAMES
TOWNELSMERF

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State of Pelaware
Department of Natural Resources
a environmental Control
Division of Air & Waste Management
715 deantham Lane
New Castle, Gelaware 19220

Themsoanam ythaug ria Holtese TELEPHONE: (202) 229 - 4542 Fax No.: (202) 322 - 4688

John S. Giles Town Menager City of Eldmere 11 Poplar Ave. Blamere, Delaware 19205

Jamuery 23, 2003

RK: Asbeston Inspes at Februick Park Apariments:

Dear Mr. Giles

The Department has received and reviewed the proposed plans for asbestos identification and abatement as associated with the subject property. These actions meet the requirements set forth within all applicable Federal and State regulations governing revovation/demolition activities. All results from the initial building surveys must be submitted to the Department for review and qualification prior to assuming all other buildings to be homogeneous in content and construction.

It is the Departments feeling that the identification and subsequent abatement should begin as soon as possible.

If you have any questions regarding the above-mentioned requirements, please feel five to contact me in the New Castle Office at (302) 323-4542.

Sincerchy,

Howard L. Morrison, III

Senior Environmental Compliance Specialist

Engineering & Compliance Branch

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PARLANZOOSLETTERSVILMOSOOS

Dover Rite

Robert J. Taggert

Delaware's good nature depends on you!

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JAN-27-2003 03:52P FROM: FELDMAN 9739627185

49499 TD: 19737314669

P:2/2

1/05/2003 14:11 PAI 201 238 1048

Town of Eismere

BUILDING PERMIT

Date: February 5, 12003

Permit No. 03-022

Applicant. Elsmen Per Clib, Limit Compactor's Laconsm DN FILE

Permit To: Conduct Mold and Asbestos Remediation in Apartment Buildings

Location;

1410 Cypress Avenue

Elamere, Delaware 19805

Tax Parcol:

19 008.00 381

Zoning Dist: R-GA Use Group:

 \mathbb{R}^2

Subdivision: Elemere Park Lot: 2

Type of Construction:

Type 3B - 3 Story Masoury Construction Exterior with WoodFrane Luterior

Description of work: Removal of Mold and Asbestos containing materials throughout building to be conducted in accordance with the Submitted "Flan for Remodiation, As Amended" and approved by the State of Delaware Division of Public Health and in compliance with the State of Delaware Department of Natural Resources and Environmental Control air quality regulations along with the restoration of all affected areas in accordance with the Town of Elemene Building Code.

Owner:

Elemere Park Chab, Limited c/o

Elamere Associates, LLC

322 Rouis 46 West Paraippany, NJ 07054

Phone

(973) 882-5050

Estimated Cost:

460.02 1

Femily Fee: 417.00

Applicants Signatura

Date:

Floor 5, 2003

Ammond FERRUARY 19.2003

Code Official:

G1155-16

12/20/2002 11:19 3029989920

(MON) 12. 23' 02 13:40/ST. 13:31/NO. 4261182113 P 3

Memorandum

Town of Eismere

Office of Code Enforcement

Date:

December 18, 2002

To:

John S. Giles, Jr. Town Manager

From:

Ellis J. Blomquist 2.15
Code Enforcement Officer

Re: Fanwick Apartments Inspections Requested by Fenwick's Attorneys

As discussed, I have contacted Regina Official to schedule inspections of each individual apartment unit for the purpose of assembling a detailed first of violations. Ms. O'Neill stated that she has consulted with her management and they have agreed to contact the code office some time in the first week of January of 2003. I will advise you when these inspections are scheduled.

12/28/2882 14:11

3829989928

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F RECEIVED DEC 2 0 2002

BISEAST PREYENTION AND CONTROL

December 16, 2002

Mr. Ellis Blomquist Code Enforcement Officer Town of Elsmere 11 Poptar Ava. Elsmere, DE 19805

Re: Fenwick Park Apartments

Dear Mr. Blomquist:

Thank you for sending the remediation plans for Ferwick Park Apartments. We have reviewed them and are encouraged by the fact that the New York City Health Department Guidelines will be followed. Being less familiar with asbestos work, we assume you and/or the confractor have sent the asbestos plans to Howard Morrison at the Delaware Department of Natural Resources and Environmental Control (302-323-4542).

Some items that we wish to note:

- Attachment 1 lists 27 upper units needing remediation. However, the text mentions only 16 units. Is this a misprint? Are the other 11 units being done under Level 17 This should be clarified.
- The documents show only two basement units had sewage problems. Perhaps this was only wet sawage. Staff noticed several basement units with dried material on the floors of bathrooms and/or kitchen areas that resemble dried sawage and some bathtubs and toilets had dark water in them. This will be a concern for workers and use of personal protective equipment for mold clean up will likely suffice. When work is complete, proper capping of drains should prevent further sawage outflow into basement areas.



12/28/2882 14:11 3829989928

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Mr. Eills Biomquist December 16, 2002 Page 2

- The text states "... wallboard with more than a small area of contamination shall be removed and discarded..." What is a small area? This should be specified.
- It is noted that any HVAC will be disabled by lock out. It will be important
 that the common kitchen exhaustiduct line is cleaned and then sealed off
 while work is ongoing to prevent contamination spread. Any other
 common connections (bathrooms, kitchen sink cabinets, wire chases, wall
 end floor penetrations etc.) also need to be similarly addressed.
- It is important that clearance testing (via air monitoring) be done in all the apartments due to wall cavities, pipe chases, etc. Common areas such as hallways/stairs also should have clearance testing. Testing of the apartments and related areas is prudent and valuable in documenting that they are safe for reoccupation. It is advised that testing for endotoxins (gram-negative bacteria) be undertaken first in the basements and subsequently in related apartments where they may-relate to elevated findings.
- The fext states that the apartments shall be unoccupied for the remediation. This could be interpreted that once an apartment is cleaned it can be reoccupied. It is important that the entire building remain unoccupied during the course of work, even if work is only in a sealed basement area. Once all the work is complete, clearance testing performed, and the all clear given should buildings be reoccupied.
- The text states that HEPA vacuuming in areas found to have elevated mold counts will occur. However, we suggest additional consideration begiven to carpet removal and examination of flooring beneath it. Further recommendations include additional examination of chase and wall cavity interiors to locate potential reservoirs which may not be visible otherwise.
- The text states that misting and wet wiping be used to control dust. Such additional water alone may add to the problem. You may want to consider going into detail regarding the methods and products to be used in this process.
- There have been a few very minor changes to the New York City Guidelines. You may want to check on these changes.

FROM KLEHR HARRISON 12/28/2882 14:11 38:

3029989920

(MON) 12. 23' 02 13:42/ST. 13:31/NO. 4261182113 P 11

TOMNEL SMERE

PAGE 84

Mr. Ellis Blomquist December 16, 2002 Page 3

If you have any questions about the above remarks, please call me.

Sincerely,

Gerald C.: Llewellyn, Ph.D

Branch Chief

Environmental Health Evaluation and

Toxicology

Cc: Ken Belmont
George Yocher
Meghan Parker
Paul Silverman

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DEPARTMENT OF NATURAL RESOURCES B. ENVIRONMENTAL CONTROL

DIVISION OF AIR & WASTE MANAGEMENT THE GRAMMAK LANE NOW THESE DOLLMARE 19720

Allo Reflectations

Telephone (202) 222 / 4542 12027 923 - 458 (Fax No.

Elis I Blomquist Code Enforcement Officer 11 Poplar Ave. Element Delaware 19805

Desember 18, 2002



RE: Ashestos issues se Fazwick Park Americante:

Desc Mr. Bloomguist

The Department has received and reviewed a copy of the document submitted to the City of Element, by RT Environmental Services, Inc., under contract by Element Park Cipio, L.F., fixed "Technical Scope for the removal of muld impensed and exposure commining materials' detect Hovember 2002, the Department would like to clarify the need for a full and storough impection of the facility fried possible substance containing numericals prior to any other activities taking place. It is our understanding that I I informatical Services. Inc. has knowledge of those regulations and the ability to parform the required the I believe is a list of those regulations permitting to this

in the State of Delaware, prior to demolitical or resignation and other as a facility as defined within the "National Emission Sundards for Hazardous Air Followates" (CERIAF) Regulations (40 CFR 61. Subport M), an owner must thereograpy inspect the affected facility or part of the facility where the demolition or renovation operations will north, for the presence of asbestos.

This inspection is to be performed by a licensed State of Dadayane Asbeston Field Technician, employed by a Licerard State of Delaware Professional Service Prime as set forth in Facilities Managements' segulations Governing The State of Delaware Commons/Supervisor/Works Asheros Training and Cartification Program and Training/Certification for Ashestos Professional Septimes. This improtion rouss include a discrepant visual inspection as well as representative sampling of all haspect materials. All meterials identified as having an asbestos

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Reservation waster altering a Acting or once or more incline components in our way, including the supposing a moved of RACM from a ficility component. Operating to which land-componing acquiring muscless are wrecked or when out are demolibed. (40 CPR 61.141)

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comment greater than 1% must be removed in accordance with "State of Delarance Regulations Governing the Control of Air Pollutions, Regulation No. 21, 510, prior to demolition/recovation activities. A copy of this impection shall be maintained on site during all renormhonidemobilion activities.

Section 112 of the Close Air Act (CAA) requires EPA to develop emission standards for hexadous air polleusnis. In response to this arction, the Environmental Protection Agency (EPA) published a list of hexardons air pollutants and promplemed the "National Emission Standards for Hazardona Air Pullments" (MESHAP) Regulations. Sinch ti .taltogates eman en acc mod mediatina pla lo slump a pa diland munici et kalt dimediapia a sangera consider is therefore considered a becardour air pollutant. The Addisons MERHAP (40 CFR 61, Subpart M) addresses milling. manufacturing and fabricating operations, demolition and removation activities, waste disposed issues, active and inactive water disposal siles and ashestos conversion processes.

The State of Delaware has adopted 40 CFR 61. Subject M and its aphaequent revisions, under the "State of Helaware Regulations Coverning the Countral of Air Pollution, Regulation No. 21, \$10, \$510.1.

NOTE: Astronom strategious requirements for all faultings not subject to 40 CFR Part 61, are covered in "State of Delevers Regulations Coverning the Control of Air Feliation", Regulation No. 21, \$10, \$510.9.

Any public or private astestos abatement project, except for work in an owner-occupied single family dwelling performed by the owner of such dwelling, thall be performed by a contractor undfor contractors who have been establed by the department.

If you have any questions regarding the above-mentioned requirements, places less free to contact me in the New Casals Office at (302) 323-4542.

Sincerely,

Roward L. Morrison, III

Scalor Environmental Compliance Specialist

Engineering & Compliance Branch

HLMeddad PSHIMODOW RITHESPHANOOS

DOM: No Robert L Togget William V. Water, Jc. FROM KLEHR HARRISON

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STATE OF DELAWARE DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DIVISION OF AIR & WASTE MANAGEMENT TIS DRAWING LOW HOW CHITE DRAWNS 19799

AIE POCUPLIATES SAUTION TELEPHONE (300) 323 - 4845 Faction (300) 323 - 456)

Water Hungarka Engineering Group bilmager R/T Engineering Group Signature, Inc. 215 West Church Rd. King of Prossis, PA 19406

December 19, 2002

RE: Ashethe items at Penwick Park Avertments:

Dear Mr. Hungarier

The Department has pectived and reviewed a copy of Englicement submitted to the City of Electric, by RT Environmental Services, Inc. under contract by Plancia Park Clab, L.P., tried "Technical Scope for the semoval of most imported and asbestos-scottering metadals" Sixth Hovember 2003, the Department would like to clarify the need for a full and therough inspection of the facility for all possible arbestos containing metadals prior to any other activities unting place. It is our anderstanding that RT Invironmental Services. Inc. has knowledge of these regulations and the ability to perform the required task. Below is a list of those regulations pertaining to this requirement:

In the State of Delaware, prior to demolition or recovation activities at a facility as defined within the 'National Emission Standards for Hazardous for Pollutanas' (NESHAP) Regulations (40 CFR 6). Subpart Mil. an owner ment thereighly inspect the affected facility or part of the facility where the demolition or renovation operations will occur, for the presence of aspectos.

This importion is to be performed by a licensed Some of Delaware Arbanus Field Technician, employed by a Licensed Stane of Delaware Professional Service Firm, as set forth in Facilities Managements' regulations Governing The State of Delaware Communes/Supervices/Worker Asbestes Training and Certification Program and

Demolities, where he wanting of thing out of any land appearing squarters member of a heavy together with any school bundling operation of internal families of the heality (41 CFR \$1,141)

Responsible tower whereigh besides at one or most besides component in soci way, including the subspine or removal of RACM from a facility component. Operations in which besides proposed granded we wouldn't as false out the detailblook [40 CPR 61.141]

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FROM KLEHR HARRISON

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Training/Certification for Ashessos Professional Services. This inspection must include a thorough visual impossing as well as representative sampling of all suspect materials. All materials identified as having an arbestor content greater than 1% roust be removed in accordance with "State of Delaware Regulations Governing the Control of Air Pollation", Regulation No. 21, \$10, prior to demolifications extend activities. A copy of this inspection shall be spainteined on site dising all respectionship mobiles estimates.

Section 112 of the Clean Air Act (CAA) requires EFA to develop staining standards for incardous air pollutures. In response to this section, the Environmental Protection Agency (EPA) published a list of becautous six politicate and promulgrand the "National Emission Standards for Hazardess Alt Pollutanes" (NESEAP) Regulations. Since ti sairossura crom co ano meet mecialine vie to danna a sa much internii ca iski interficigia e meciany astrodeu is therefore consistered a herenicus air politonet. The Asbestes NESHAP (40 CFR 61, Sabpart M) addresses trilling, manufacturing and fabricating operations, demalities and reported in activities, waste disposal issues, active and inserting waste disposal sizes and aspestos conversion processes.

The State of Delaware has adopted 40 CFR 61, Subpair M and its subsequent revisions, under the State of Delaware Remissions Governing the Cantral of Air Pollution", Regulation No. 21, 510, 8810.1.

NOTE: Asbestos abancuem requirements for all bailtings per subject to 40 CFR Fort 61, are covered in "State of Deloware Regulations Governing the Control of Air Poliction , Regulation No. 21, 510, 8510-9.

Any public or private substitut abatement project, exception work in an owner-occupied single family dwelling performed by the owner of such dwelling, shall be performed by a contractor and/or contractor when have been certified by the department.

If you have any spections regarding the above-mentioned requirements, please feel free to contact the in the New Castle Office pt (302) 323-4542.

Sincerely,

Howard L. Morrison, III

Senior Environmental Compliance Specialist

Engineering & Compliance Branch

M. Merblert

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Dever File Wallers V. Wester, Jr. 01/14/2003 09:26 - 6102650687

RT ENVIRONMENTAL

PAGE 02

RT Environmental Services, Inc.

January 13, 2003

Gerald C. Llewellyn, Ph.D.
Branch Chief
Environmental Health Evaluation and Toxicology
Delaware Health and Social Services, Division of Public Health
Jesse S. Cooper Building
Federal Street
P.O. Box 637
Dover, Delaware 19903



Subject:

Fenwick Park Apartments - Technical Scope for the Remediation of Mold

Impacted Materials

Dear Dr. Llewellyn:

This is in response to your questions and comments on the mold remediation sections of the subject document as detailed in your December 16, 2002 letter to Mr. Ellis Blomquist. Each response is numbered below in the same order as the builte list in your letter.

- A total of twenty-seven (27) individual, upper-level units will be remediated.
 These units are found in a total of sixteen (16) of the apartment buildings. Most of the units will be remediated under Level II procedures, however some upper level units may be done under Level I procedures.
- 2. The two sewage leaks listed in the Technical Scope are the only recent sewage leaks documented by the apartment maintenance staff. Regardless, as your letter notes, the workers will be protected from exposure to fungi and bacteria through hazard communication, good industrial hygiene practices and personal protective equipment. Any drains which are uncapped will be capped.
- 3. The term "small area" is as defined in the New York City Guidelines. The term "small area" can first be found in the general section of the Technical Scope, entitled "Mold Abatement", and then is more specifically defined according to the Levels outlined in the subsequent, more specific sections.
- 4. As indicated in the Technical Scope, any common areas will be handled in the manner you have requested, i.e., the areas will be cleaned and sealed off to prevent any migration of substances of concern.
- 5. Clearance testing will be done in each apartment and in the common stairway. The final clearance will consist of a rigorous visual inspection followed by air testing using the spore counting technique. The spore counting method has the advantages of faster turn-around time and will pick up non-viable spores. Endotoxin testing is not needed because the potential source for gram-negative bacteria will be removed by the remediation. Nonetheless, testing can be done on an as-needed basis if a potential source of gram-negative bacteria is identified.



6102650687 01/14/2003 09:26

PAGE

- 6. Each building will remain unoccupied until the remediation required within that building (including final clearance) is complete, including in all of the units and in the basement in the building.
- 7. If the source for elevated mold counts is believed to be a source other than the basement, further investigation will be undertaken as appropriate to identify and address the source. If there is reason to believe that there is a potential source in the carpet or flooring beneath it, these areas will be inspected. The remediation process will include more intrusive investigation of areas where mold may not have been visible during the inspections, to include wall cavities, chases, and other potential interior reservoirs, if the source is not otherwise identified and such intrusive investigation is anticipated to be helpful in identifying the source.
- 8. The text states "Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are recommended." This is taken directly from the latest published version of the New York City Guidelines and is intended to minimize the generation of dust (and mold spores) within the containment area. Misting of contaminated wallboard will be limited to instances in which all of the wallboard within the containment area will be removed; therefore, any area which is inadvertently soaked will be promptly bagged and disposed off-site, alleviating any potential problems from soaking. After remediation, work areas are to be cleaned with a damp cloth and/or mop and detergent solution, and then dried. This is also a standard procedure taken from the New York City Guidelines.
- 9. The latest published version of the New York City Guidelines was used in the preparation of the Technical Scope.

As you know, it is important to move quickly so that the remediation process can begin. Accordingly, we would appreciate your efforts to respond to this letter promptly.

Sincerely,

RT Environmental Services, Inc.

Gary R. Brown, P.E.

President

gbrown@rtenv.com

Sovereign Environmental Group

Larry W. Johnson, PE, CIH

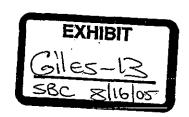
Principal

liohnson@sovereignenvironmental.com

RT Environmental Services, Inc.

January 13, 2003

Mr. Howard L. Morrison, III
Senior Environmental Compliance Specialist
State of Delaware
Department of Natural Resources & Environmental Control
Division of Air & Waste Management
Air Quality Management Section
715 Grantham Lane
New Castle, Delaware 19720
(302) 323-4542/FAX (302) 323-4598



RE: ASBESTOS ISSUES AT FENWICK PARK APARTMENTS CITY OF ELSMERE, DELAWARE

RT PROJECT #70281-02

Dear Mr. Morrison:

RT Environmental Services, Inc., (RT) has reviewed your December 18, 2002, letter responding to RT's November 2002 "Technical Scope for the removal of mold impacted and asbestos-containing materials" prepared for the City of Elsmere for the above referenced location. This letter acknowledges and responds to your comments.

RT understands that complete inspections of each of the Fenwick Park apartments to identify all potential RACM are needed prior to demolition, renovation, and/or mold remediation. The inspections will be completed by AHERA certified asbestos building inspectors under RT's State of Delaware Professional Service Firm license. The inspectors will collect representative bulk samples of the potential RACM, unless material is to be presumed ACM.

RT plans to initially perform complete inspections for two of the thirty-nine (39) site buildings. We will also review available information on construction history. If the buildings are found to be uniform, constructed at approximately the same time and have had similar maintenance records, RACM identified in the two buildings inspected will then assumed to be present in the balance of the buildings onsite. The inspection report will include drawings and tables summarizing the inspection results.



D0039

Mr. Howard L. Morrison, III RT Project #70281-02 January 13, 2003 Page 2

No demolition, renovations or mold remediation will be conducted until the appropriate surveys have been completed.

Should you have any questions or comments regarding this project, please feel free to contact me at (856) 467-2276.

Very truly yours,

RT ENVIRONMENTAL SERVICES, INC.

motople a Egyel

Christopher R. Eyre

Associate

cc: D. Schleicher, Esq.

G. Brown, RT

W. Hungarter, RT

SOVEREIGN

Environmental Group

Robert A. Baines, Principal

Larry W. Johnson, PE, CIH, Principal

October 3, 2005

Douglas F. Schleicher, Esq. Klehr, Harrison, Harvey, Branzburg & Ellers LLP 260 South Broad Street Philadelphia, PA 19102-5003

Subject:

Cost Estimate for Asbestos and Mold Abatement

Dear Mr. Schleicher:

At your request I am submitting the attached cost estimate for the proper remediation of the conditions identified by the Town of Elsmere as the basis for its orders of condemnation (i.e., asbestos, mold and other conditions) at Fenwick Park Apartments in October, 2002. The estimate represents the cost of remediation a prospective buyer of the apartment complex should have taken into account at that time in determining whether or not to purchase the complex. The cost estimate is based on the following assumptions and conditions:

- 1. The apartments are in the conditions as they existed in October 2002.
- 2. All of the basement apartments would be abated of asbestos floor tile and mold. All drywall in each basement would be removed, regardless of the presence of mold, if any, in the basement.
- 3. The asbestos and mold abatement in each basement would be completed as a single project.
- 4. None of the abated materials (e.g., drywall) in the basement apartments will be replaced.

The work would proceed as follows for each building. Polyethylene sheeting would be used to erect barriers and enclose the basement. All accessible openings would be sealed. A negative pressure differential would be established using high efficiency particulate air (HEPA) filtered air cleaning devices to ensure that no air or dust from the work area will flow into the upper level apartments. A three stage decontamination chamber would be constructed for worker and materials decontamination. The basement would be remediated of both mold and asbestos floor tile. The basement would be cleaned, inspected by the environmental consultant and final testing would be performed. Once final testing has indicated a "clean" area, the containment would be removed and the basement barrier replaced.

After basement remediation, spot remediation would occur in each of the upstairs apartments outlined in the specification. The work in the upstairs apartments should take no more than one work day. As a conservative measure, we have assumed one full work day in each building for the upstairs units. Temporary relocation of residents would not be required for the abatement. Note, however, that in certain units residents could not be present during the remediation due to logistical constraints (inability to access kitchen or bathroom during remediation).

Note that as an alternative to the above sequence, the upstairs units could be remediated first and the basements second. This is only a sequencing change, and would not impact the cost estimate.

The cost estimate includes an industry-standard contingency as an additional measure of conservatism. The contingency factor addresses the possibility that additional previously inaccessible conditions are noted during the performance of the work which need to be addressed and that work may take longer than expected in individual cases.

If you have any questions or need any additional information, please contact me.

Sincerely,

Larry W. Johnson, PE, CIH Principal

ljohnson@sovereignenvironmental.com

Attachment

Fenwick Park Apartments Mold and Asbestos Remediation Cost Estimate

Number Location

38 Basements Remediation *	\$ 190,000
29 Upper Level Bathrooms	\$ 29,000
6 Upper Level Kitchens	\$ 6,000
Contingency (30%)	\$ 10,500
Inspection, Monitoring & Reporting	\$ 45,000
Cost of replacing materials in upper levels	\$ 11,600
Total	\$ 292,100

^{*} This estimate assumes that all of the gypsum board and all of the vinyl asbestos tile will be removed from every basement. If subsequent investigation indicates that certain basements, or parts of basements, have not sustained water damage, the remedial efforts and costs may be reduced.

10/03/2005 14:08 FAX

2002/008

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116.			416.	GROSS AMOUN		100.00			9,919,816,59
	ROSS AMOUNT DUE FROM BORROWER	6,815,417.75	720.					erengen er	
	Deposit or earnest money	200,000.00	501.	Ехова баролі (а			AND DESCRIPTION		200,000.00
-	Principal amount of new Joan	4,800,000.00	502.	Settlement charge	es lo selle	r (ilne 1400)			198,700.00
203. E	xisting losn teken subject to		503.			lo			
	inprovement Reserve Draw-\$186840.64			Payoff [Irst mortg					1,408,264.70
205.				Payoff second me SEWER FEE 200			NEW C	ASTLE COU	147,823.96
207.				MORTGAGE/UC		ACTION FE			148.00
208.			1	PAYOFF RESER				C ROME, LLP	24,000,00
200.			509.						
	Adjustments for Barns unpaid by seller			Adjustments for It	loma unpe	ud by soller			
	City/fown laxes to	<u> </u>		City/town texes	·····	···	lo		
	County taxes to			County laxes Assessments			to		
213.	144444		513.						
214,			514,				-		
215.			515.						
218.		 	518.					<u> </u>	
217,		 	517. 515.					·····	
219.			519.		·				l
220, 1	OTAL PAID BY/FOR BORROWER	6,100,000.00	520.	TOTAL REDUCT					1,979,036.66
	The MSCOR SECTION ELECTRICAL ABOVE PROBLEM CONTRACTOR								
	Gross smount dus from borrower (line 120)	5,615,417.75		Gross emount du			e dom		3,816,816.59
	ioss amounts paid by/for borrower (line 220)	5,100,000.00		Less reductions is					1,979,834.66
503,	CASH (X FROM) (TO) BORROWER	515,417.75	605.	CASH	l(FR	OM) (X TO	D) SELL	.ER	1,939,879.93

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		Page 2 of 2		Form	n Approved OMB 2502-02
L.	SETTLEM	ENT CHARGES			
BASED ON PRICE \$ 3,800	000,00			PAID FROM	PAID FROM
Division of Commission (line 700) as follows:	000,00	© %-	117,000.00	BORROWER'S	SELLER'S
701, 117,000.00	to THE KISLAK CON	ABARV IUA		FUNDS AT	FUNDS AT
702.	to	F		SETTLEMENT	SETTLEMENT
703. Commission paid at Settlement					117,000.0
704,					(17,000.0
A STATE OF THE MERCHANAGE THE SENDING STUD	REVALUE HUEVA SIGNATURA				
801. Loan Origination Fee %	REIT MANAGEME	INT CORP.		49,000,00	and the state of t
802. Loen Discount %	· · · · · · · · · · · · · · · · · · ·				
803. BROKER FEE	M. TUCK CAPITA	L ASSOCIATES	(48,000,00B)		
604. Inspection Fee	BRT REALTY TRO	JST		1,500.00	,
805. Lender's Inspection Fee to		· · · · · · · · · · · · · · · · · · ·			
809. Legal Fees	Moritt, Hock, Ham	raff & Horowitz, LLP		18,000,00	
807. Assumption Fee to		· · · ·			
808. Commilment Pee	BRT REALTY TRU	JST	(81,000,000)	37,000.00	
BOR.					
810. Remediation Testing Fac	Detail Autorigtes			2,800.00	
511. Interest Reserve	SRT REALTY TRU	JST		319,600.00	
812.					
513. Improvement Reserve	BRT REALTY TRU			1,033,089,36	
814. Engineering Fee		мападамент Согр.		1,000.00	
ENGINEERS REPORTED TO THE RESERVE OF THE PROPERTY OF THE PROPE			k k		
901. Interest from to		/day (-cleys)		
902. Mortgage Insurance Premium for	12 months to		UST		
903. Hazard Insurance Promium for		TMR RISK		26,538.87	
904, Flood Insurance		TMR Risk		10,270.00	
				950 10 5 4 5 10 10 10 10 10 10 10 10 10 10 10 10 10	
1001. Hazard Insurance months				AND DESCRIPTION OF THE PROPERTY OF THE PROPERT	
1002. Mortgage Insurance months		per month		14,743.86	
1003. City properly taxes months		per month	 · · · · · · · · · · · · · · · · · 		
1004. County property taxes months		per month	·····	25,923,60	
1005, Arteus assessments months		per month		27,358.84	
1008, SEWER (2ND-3RD&4TH QTR)		- Por Million		212.00	
1007, Flood Reserve				455.H3	
1008.			· · · · · · · · · · · · · · · · · · ·	455.83	
2 100 THE CANDES		An eleven region con es		and the second s	rango an ing alaman an ang ang ang ang ang ang ang ang an
1101. Sattlement or closing fee to					
1102. Abstract or title asserch to YICOR	TITLE INSURANCE COMPA	NY		725.00	
1103. Title exemination to					
1104. Title insurance binder to					
1105. Document preparation to Fidelity	Netional Title Ins. Co.		· · · · · · · · · · · · · · · · · · ·	20.00	
1106, Notary fee to					
1107 Atterney's fee to					
(includes above hams numbers:			,		· · · · · · · · · · · · · · · · · · ·
1108. Title insurance to Fidelity	National Tille Insurance Co).		12,825.00	·
(hotudes shove (leme numbers:)		
1109. Lender's coverage \$ 4,900,000,00	\$ 12,800.00				
1110. Owner's coverage \$ 3,900,000.00	6 25.00				
	TY NATIONAL TITLE			50,00	· · · · · · · · · · · · · · · · · · ·
	TY NATIONAL TITLE			60.00	
	TY NATIONAL TITLE			E0.00	
MARSH #500 GONERDWEITHER BEGING WH					
	1gege \$ 465.00	Release \$	· ·	512.0 0	
1202. City/county law/stamps: Deed \$ 58,500				29,250,00	29,260.00
1203. State tax/stamps: Deed \$ 58,500				29,259.00	29,250.00
1204. Amalgrament of Leases & Rents 1205. UCC Recording	Recorder of Deeds			241.00	
	Récorder of Daads			. 75.00	
AND STATE OF THE PROPERTY OF T	The second secon				
1301. LLC NAME RESERVATION	CT CORPORATION			128,00	
1302. Clening Attendance Fee	Fidelity National Ti	lite		500.00	
1303. Corp. Filing & Good Standing	CT Corporation			515.09	
1304, BEPARATE TAX PARCEL ENDORSEMENT 1305, CERTIFICATE OF REVIVAL & GOOD STANDINGS	FIDELITY NATION/			60.00	
1306. Legal Free	CT CORPORATION Blank Rome, LLP	·		<u>-</u>	550.00
1307. Logal Fees	Robert S. Nussbau	m Fea		32,000,00	
1308. Legal Fees	Felnetein, Rajan, K			25,000.00	
1400, TOTAL SETTLEMENT CHARGES	(enier on lines)	103 Section J and 50	2. Section K	1 502 504 #-	23,850.00
I have cavalily reviewed the HUD-1 Settlement Statement and, to the account of by the in this transaction. I turber carrily that I have received the August DE	w best of my knowledge and better	, if is a true and accurate	stelement of all receipts and Maburaton	1,695,601.18	199,700.00
DELAWARE REAL ESTATE INVESTMEN	ved a copy of HUD-1 Settlement \$ (T Ellkins 1 1 A	Helement.		- in inside on title	
A	II POND, LEG	ETŞi	MERE PARK GLUB LIMI	TED PARTNERS	HIP
By: DAVID WALLER, MEMBER		By:			٠
		- 20	JU) S. LEIBOWITZ, PRESIDENT		
To the best of my knowledge, the HUD-1 Settlement Statement whichly like undersigned as part of the settlement of this transaction.	h i have prepared is a love and ac	CONTRACT ACCORDANCE OF USE TWO	the which were received and have been	or will be disposed	•
		1		 	
BLANK ROME, LUP		~			Date
WARNING: II is a crime to knowingly make takes (latements to the U For damile see; Title 15 U.S. Code Sections 1901 and Section 1910.	hited Sister on this or any other a	lmilar form. Panalillos upo	n conviction een include a finé and impi	teonment,	J-10

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	STALEMENT STATEMENT					
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	U.S. DEPARTMENT OF HOUSING AND DREAM DE	VELOPMENT				
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	(C)TG: Hellis Winker (L)*O'C'), Asta best prayer are spelied?					
Ö. 1	**	DELAWARE REALE	_	TMENT FUND, L	rc	
l		433 PALISADE AVEN JERSEY CITY, NJ 07				
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<u></u>		ELSMERE PARK CL		ARTNERSHIP		
		322 ROUTE 48 WES	-			
ŀ		PARSIPPANY, NJ 07	นจ4			
	NAME AND ADDRESS OF LENGTH:	BRT REALTY TRUS	T			
ļ ".		60 CUTTER MILL RO				
ì		GREAT NECK, NY 1				
G.	PROPERTY LOCATION:	1410 CYPRESS AVE	NUE			
		ELSMERE, DE	16.00± 00 304			•
<u> </u>	SETTLEMENT AGENT,	TAX PARCEL NO.: 1 BLANK ROME, LLP		iO		
1 "	The second secon	1201 North Market S			19801-4220	
1	PLACE OF SETTLEMENT;	400 GARDEN CITY	PLAZA, GARD	EN CITY, NY 115	530	
$\overline{}$	SETTLEMENT DATE 3/16/2003		DIEBNIKACHE		3/18/2003	-100
J.	SUMMARY OF BORROWER'S TRANS	ACTION]			SELLER'S TRANSAC	
101	Contract saids price	00,000,000,0	AU1. Contract select		CATTOR COLUMN TO THE TRANSPORT OF THE TR	3,000,000.0
	Personal Property		402. Personal Prop	the second second		
103.	Settlement charges to borrower (line 4400)	1,655,801.14	A03.			
104.			404.			
108.			405.			,
108	Collections stores (12/19/02 to 05/20/02 Adjustrations to be per per advances	9,634,50	4UM. City/town that	or Restle Pald by weller in	10 08/32/03	1,614.4
107.		10,197,00	407. County lawes	#1/4#F	G 6A410/08	10,107.0
100	Азлетилия р		ada, Assessments		to	
100,	TOTALED OF ENAMED MAKES PETRALLO TO	10.00	409. 1ST UKLARTE	RBEWE CONTOCS	to 03/31/03	16.0
174.			410,			
111.		 	411.			
113.		 	413.			·
114.			414.			
175.			415,			
116.			418			- two see
	GROSS AMOUNT DUE FROM BORROWER	8,414,417.75		PUNT DUE TO SELLER	00 (4.12a0) (2.1.4b) (4.1.1b) 40(8.	2,518,416.4
	Disposit or somes money	200,000,50	601. Spends days		的复数形式。这些 对连	200,090,1
	Principal amount of new lean	4,500,000,60		wyse po paline (line 140))	196,700,0
	Exhaing town when exhibits to		843. Existing loan			
204.			294. Payoff Seld (h			1,443,354,
203,			SOA, SEWER FOR		NEW CAPILE COU	147,823.
206.		<u> </u>			RECORDER OF DE	148.
208		 	SOR. PAYOFF HE		ELANK ROME, LLP	
200			509_			
	Adjustments for items unpeid by seller			for items unpeid by solic		
	CRystown (street to		510. Caly/laws tex		<u> </u>	
	Ocurry texas to		511. County torse		lo lo	
213		 	513.			
214			614.			
215			515.			
218			816.			-
217		 	517. \$18.			
219			619.		,	1
	TOTAL PAID BY/FOR BOPROWER	4,100,000,00		UCTION AMOUNT DUE	SELLER	1,973,636
100	集制是實際可以至10mm。 1. 1	The second second	Sence and the second		5.45 · 45.1 \$4.00 (1.55)	
501	Gross ameunt due from borrower (IKA 120)	8,013,417.73		Went to seder law 450.		2,210,010
├	Less arrounds paid by/for borrower (line 220)	#,100,000.co	otto. Laste rethrest	our to ethount due seller	(47 ± 520)	1,979,136
303	, CASH (X PRÓM) (TQ) BORROWER	\$15,417.7\$	9200a. Ç.	Азн; Е ФОМ)(Х	TO) SELLER	7,930,678.

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		SETTLEMENT CHARGES			
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BASED ON PRICE 3	3,500,000.00	<u> </u>	117,000,00	PAID FROM	PAID FROM . SELLER'S
Division of Commission (Tine 72)		_	1	BORROWERS	
ч. п	17,000.00 le TH	ie kalak company, wo.		FUNDS AT	FUNDS AT
2.	· t ø		1	SETTLEMENT	SETTLEMENT
it. Commission paid at Settlement					117,000,00
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11. Loan Origination Fee		IT MANAGEMENT CORP.		40,990,00	
12 Loan Oliscount	*				<u> </u>
D, DROKER FEE	M	TUCK CAPITAL ASSOCIATES	(45,609,00D)		
4. trapertion Fee		AT REALTY TRUST		1,830.00	-
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		orlet, Heck, Hamroff & Horowitz, LLP		14,000.90	
38, Laun Fest		4)-4 H-4-, H-41-01-12-10-10-10-10-10-10-10-10-10-10-10-10-10-			, -
7, Aventine Phi to			(81,000,0021)	\$7,000,00	
S. Commitment Fee		NT REALTY TRUST	(4-1446-9211)	47,000,00	
78).					
10, Remediation Testing Fee		vidi Associates		2,100.00	
Ti. Interess Reserve	P	RT PEALTY TRUST		318,800,00	
12				l	
13. Іпричуствів Везелів	9	RT REALTY TRUST		1,037,083.36	
14. Speinseing Fee		Specific Property Namegement Corp.		1,500,88	
			等于40°Y,10°E54500000		(2) 1960年發展
	17 TO 18		λa) mitiration and an articular to the state of the sta		والمتراها والمتراجعة والمترا
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62. Mortgage Industrion Premium to				28,034.87	
its. Hazard Makinghou Pronchim for		THE FRAIL	<u> </u>	10,270,00	
04, Place Insurance	,	THE FEAR		10,170,00	
OS,			Carrier Manager		
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001. Hesself insurance	montius 🙆 🕏	per month		14,743.86	
002, Mortudge Insurance	enoculus (2) \$	Sale streetige			
COS. City property laune	monera 🕁 \$	per ments		28,523.40	
004. County property buces	months @ S	per month		27,384.54	
	mountain Ch. R	per storch,			
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				1 317.50	
	医乳管 医乳管 医甲基酚	CONTRACTOR TO SERVICE OF THE		312.00 pas.p3	
007. Placed Reserve 008. 101. Septement or closing lee to				\$44,8 5	The state of the s
007. Flavoi Reserve DDS. 101. Sottlement or choling like to 102. Abstract or Ville states to		UNANCE COMPANY		pasies	Sec. Mar.
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"ELANK ROWE, LIP

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21008/006 10/03/2005 14:11 FAX DRAW HUD-1 (2006) RESPA, HK 4508.2 Page 2 of 2 \$ Form Approved DWB 2502-0268 SETTLEMENT CHARGES 117,000,00 2,900,000.00 PAID FROM PAID FROM BASED ON PRICE 9 Division of Commission (line 700) as follow BORROWER'S SELLERS FUNDS AT FUNDS AT 117,000.00 THE KIBLAK COMPANY, INC. 701. SETTLEMENT SETTLEMENT 702, Commission paig at Settlem 703 117,000.00 704 801. Loan Origination Fee 4 REIT MANAGEMENT CORP. 48,000 48,000.00 Loan Discount cot. BROKER FEE M. TUCK CAPITAL ASSOCIATES (49,000.00B) 804. Inspection Fee BRT REALTY TRUST 1.500.00 805. Lender's Inspection Fee to Morie, Hock, Hamroll & Horowitz, LLP BDE. Legel Form 18,000.00 807. Assumption Foote BAT REALTY TRUST (B00.000, to) 808, Commissent Fee 27,000.00 810. Remediation Teating Fee Detail Appociates 2,500.00 811. Interest Reserva BRT REALTY TRUST 318,600,00 Improvement Reserve 875. BRT REALTY TRUEY 1.033,050.00 814. Engineering Fee Majestic Property Management Corp. 1,000.00 THE STATE OF THE S 901. Interest from -CEYA) Manage Insurance Premium for 602. mucities pp BRY REALTY TRUST 903. Hozard Insurance Premium for Year to BRT Realty 85.838.PO 904. 805 1001 Hezard Insurance 2 Intentits @ S 8,228.14 per month 16,452.28 1002, Mortgage (naurance mentra @ \$ 1003. City property tenes months @ \$ Per Monih 25,923.40 mentie 🖨 S 1004. County property laxes 27,365.64 1005. Arrestal Management months @ \$ 1009. SEWER (ZND-SROL-TH CTR) 1007 1000 22.43、12.25。19.10、19.10、19.20 19.20 1102. Abstract or the search to TICOR TITLE INSURANCE COMPANY 226.00 1103. Titis commination to 1104. Title insurance binder to Fidelity National Trile Inc. Co. 1106. Document preparation to 10.00 1100. Nothry (we to 1107. Alternay's fee to (includes above items numbers: 1108, Title insurance to Fidelity National Title Insurance Co. 12,825,00 (notuces above items numbers: 1109. Lander's poverage \$ 12,000.00 4.800.000.00 1110. Owner's covernoe 3,000,000.00 \$ 25.00 1111. ENVIRONMENTAL ENDORSEMENT FIDELITY NATIONAL TITLE 30.00 1112. VARIABLE RATE ENDORSEMENT FIDELITY NATIONAL TITLE 50,00 1113. SURVEY ENDORSEMENT FIDELITY NATIONAL TITLE 50,00 1201. Recording: Deed 5 45.00 Morrage \$ 468.00 Release \$ 512.00 **空间间接是面顶** 1201. Recording: Deed \$ 58,500.00 Mortgage S 1202. City/couldy lax/stampe: 29,260,00 1203. State tex/atemps: Deed \$ 58,500.00 Morlgage \$ 29,280,00 28,280,D0 nter of Deads 241,00 120s. Applyment of Lenses & Renta 1205. LCC Recording Recorder of Deads 75,00 LLC NAME RESERVATION CT CORPORATION 124,00 Fidelity National Title 1302. Cleaning Attendance Fee 600,00 1303. Corp. Filing & Good Standing CT Corporation \$15.00 1304. SEPARATE TAX PARCEL ENDORSEMENT FIDELITY NATIONAL TITLE 60.00 1305. CERTIFICATE OF REVIVAL & GOOD STANDINGS CT COSPORATION 550,00 1306. Lagai Face Biank Rome, LLP 32,000,00 1307. Lagal Food Robert & Nussianni Eve 25,000,00 Felnstein, Reise, Kelin & Booker, LLC 13Ωβ. Legal Fees 23.650.00 1400. TOTAL SETTLEMENT CHARGES (enist on lines 103, Section J and 502, Section KI 1.745.482.88 199,700.00 me HUD-1 Settlement Statement and to the owledge and baller R is a mus UD-1 Selffernest Selfernest. ELSMERE PATT STUBLIMITED PARTNERSHIP DELAWARE REAL ESTATE INVESTMENT FUND, LLC . B. DAVID WALLEN, MEMBER ELPOT B. CHINDWITZ PRESIDENT To use best of my treathedga, the IRID-1 Schlisment, Elektrick which I have prepared is a true and securate account of the funds which were received and have been or will be distincted by the undersigned as part of the elegentari of this transaction.

WARNING: It is a crime to provincity make that extractures to the United Stores on this or any other stratur form. Pendules upon portables also include a fine and impersorment. Providing the control of the control of

Patrick Costello - Pending motions

From:

David Eagle

To:

emcnally@morrisjames.com; LSherman@morrisjames.com

Date:

10/14/2005 10:03 AM

Subject:

Pending motions

Ed and Liza -

I would like to offer a practical solution to the tangled web of motions that Judge Robinson is going to face. I was out yesterday but evidently the JAB document problem has not been resolved, I assume because Mr. Nussbaum has not signed off. I see no problem with your stip, except it's not clear to me that confidential docs. may be submitted to the court and how.

Having not seen the 3 boxes of docs, that underlie a key exhibit in the motion to preclude Wilk, we would have to move to strike any reference to it - either in lieu of our answer brief or in conjunction. We intend to refer to the Johnson supplement, which you have moved to strike. Would it not make more sense to deal with those corollary matters expeditiously and then "tee up" the Wilk motion? We can brief (or preferably resolve) the Johnson issue and hopefully resolve JAB by end of next week. We will then file answer brief to Wilk motion and we're obviously not going to insist on a 5-day reply.

Please let me know your thoughts.

David.

RICKY MANUEL, CARLA KEES a#f0t2C-10-212 CATHERINE KELLAM.

Plaintiffs.

ν.

ELSMERE PARK CLUB, L.P. and LCL MANAGEMENT, L.L.C.

Defendants,

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TOWN OF ELSMERE

Third-Party Defendant.

BEFORE: HONORABLE JAN R. JURDEN, J.

APPEARANCES:

WILLIAMS CUKER BEREZOFSKY BY: GERALD WILLIAMS, ESQ. BY: WENDY CARR, ESQ. For the Plaintiff

KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS BY: DAVID S. EAGLE, ESQ. BY: DOUG SCHLEICHER, ESQ. For the Defendants

MORRIS, JAMES, HITCHENS & WILLIAMS BY: JILL DISCIULLO, ESQ.

For the Town of Elsmere

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APRIL 16, 2004 Courtroom 8E 1:00 p.m.

PRESENT:

As noted.

THE COURT: Hello, everyone. I apologize for being late. Could you all introduce yourselves again just so I know who you are please.

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MR. WILLIAMS: Yes, Your Honor, I'm Gerald Williams, and with me is Wendy Carr. We're from the firm of Williams Cuker Berezofsky, pro hac vice for the plaintiffs.

MR. EAGLE: Good afternoon, Your Honor. David Eagle and my partner, Doug Schleicher. Also Larry Johnson is with us. He is the author of our science expert report.

MS. DISCIULLO: And Jill Disciullo from Morris, James, Hitchens & Williams for the Town of Elsmere.

THE COURT: Nice to see you all. All right. I am happy to say that unlike the last office conference we had I have actually reviewed

everything and I've read all the cases. And I have to tell you my decision was not an easy one, but rather than keep you in suspense I will tell you the outcome and then I will go back and give you my basis for ruling the way I have. I'm denying the motion for class certification for reasons which

I'll elaborate on in just a minute.

I don't do so lightly because I am concerned about the plaintiffs' alleged problems and their eviction. However, I just do not feel that the plaintiffs have met the burden of demonstrating that each of the four elements of rule 23A have been satisfied, and, even if they were, I don't find that one of the three subparagraphs of rule 23B has been satisfied. So let me just run through in a little bit greater detail for purposes of the record and perhaps appellate review.

With respect to 23A, numerosity is obviously not contested. Commonality, typicality and adequacy, let me go through those one at a time.

The defendants argue that the heart of the complaint is the defendants' alleged negligence in failing to abrade the mold conditions prior to the

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town's condemnation and defendants' alleged breach of each lease of former tenant by failing to provide a safe apartment for some period of time prior to condemnation. Paragraph one of the complaint states, quote, a civil action arising from the failure to abrade toxic mold and other dangerous conditions in 38 residential apartment buildings beginning in approximately 1989 resulting in the recent condemnation of these buildings and eviction of all residents.

With respect to commonality, the plaintiff claims that all class members lost their homes at the same time due to the same causes and therefore there's commonality. However, I think that that is a conclusory statement and I don't think that that's completely accurate, because I don't find based on what's been produced in the records so far that it is due to the same causes.

I know plaintiffs adamantly argue that it is due to the 1989 water event, but there's ample evidence in the record produced by defendants that there were other episodes of water damage or opportunities of water damage which could

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significantly impact on the causation issue.

I reviewed carefully Muttart, Mentis, Rivera and some of the other cases cited to me by both parties and I find it is a legal question depending on highly divergent facts with respect to the cause, extent, duration of mold in each of the 38 buildings and perhaps each of the 152 units condemned.

There are issues that are on the vary between the plaintiffs, the units, the buildings with respect to defendants' knowledge of the conditions or potential conditions. Another factor which I think weighs against commonality is the fact that various inspections were performed on various units, at various times and defendants have represented, and indeed it is not rebutted by the plaintiff in a reply, that these inspections basically gave the defendants a clean bill of health with respect to some units and detected no presence of mold, or at least a presence that would rise to a level of concern.

There is also issues being commonality which would resolve around defendants individual efforts

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to address water problems, what notice plaintiffs had of particular water damage producing conditions, etcetera. All those issues I find are going to vary highly. And the variety of potential causes of mold of the different times in the apartments history and because the common legal questions are depending on the divergent facts, I don't find the commonality requirement is met.

I rely in part in reaching this determination on the commonality factor on the fact that the defense expert in October '02 did not find mold growing at all in some basements. He found widely varying degrees in others. He determined there were different causes of the mold and that there had been separate isolated water damage events. There have been records of the inspections and various proactive measures taken by the defendants. And that's set forth in pages 11 to 14 in defendant's answer brief.

Turning to the issue of the element of typicality, the question is whether the representative's interest are truly aligned with those of the purported class. And I believe it was

Judge Quillen who noted that typicality often overrides fairly often with the question of adequacy of representation.

And the issue with respect to whether Mr. Manuel was a tenant or other legal occupant is troubling to the Court because it's unrebutted that Mr. Manuel signed a lease with LCL on July 1, 1989 with his former spouse. They were then separated. His former spouse signed a new lease in 1992 and agreed she would be the only one occupying the unit. The record reflects they reconciled and resumed living together, but there's no evidence of an updated lease, and the former wife passed away, unfortunately, in 1995. So there's a question in my mind with respect to whether Mr. Manuel qualifies as a tenant or other legal occupant in the first instance. And that issue hasn't been resolved to my satisfaction as of yet and I didn't see anything in reply from the plaintiff putting that issue to rest.

With respect to Ms. Kees, she moved into 1411113 Cypress with Mr. Manuel. It's undisputed she never entered into a lease, and there is a

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question in my mind whether she had authority to reside in the apartment pursuant to a lease.

I don't think it's disputed. With respect to a breach of implied warrant without ability there must be a valid contract, and defendants have created a serious issue in my mind through their filings of whether or not such a contract exists.

With respect to Ms. Kelem, the Court finds she was a tenant or lawful occupant; however, not so sure her claims are typical in that Cou inspectors certified to have an ability of her unit, 1407-3 Maple, days before the town poster notices of condemnation.

Defendants also point out that there was apparent water damage from faucet leaks or room faucets, and they raised the issue of whether defendants were on notice of that and whether the water damage could have been the cause of mold in her apartment.

So in looking at whether these three plaintiffs' claims really are typical of those of the proposed class, I think it's highly questionable. That plaintiffs allege the claims

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arise from the same event or course of conduct and the Court is simply not satisfied that they do.

There's no question on the issue of adequacy that the plaintiffs have retained highly qualified counsel to represent the class. The Court has no qualms about this, and the defendant in fact agrees on footnote 23 on page 27 of its brief. However, the question is also whether the plaintiffs themselves are adequate representatives.

As I mentioned before, I have a serious question about whether Mr. Manuel, Ms. Kees are even members of the class they purport to represent. But, as the defendants point out, Mr. Manuel, Ms. Kees have a questionable prospect of recovering relocation costs and the class representatives will be charged with recovering such costs.

Ms. Kelem incurred no out-of-pocket costs. I don't think that's disputed in the record, and her prospect for back rent is slight. So in light of this I'm not satisfied that the plaintiffs are adequate representatives. And even though I found that the plaintiffs have failed to make a threshold

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showing under 23A, I am going to go on to discuss 23B just for sake of completeness. And I will discuss it briefly since I don't even need to reach it.

With respect to whether or not individual issues of causation and liability pervade the litigation, I have reviewed all the pertinent cases and I find that as of Wheeler the absence of personal injury claims does not salvage the complaint for purposes of class certification. I don't find that a class action under these particular circumstances would be superior to other means of adjudicating the tenants' claims.

As I've said previously, the facts giving rise to liability may vary substantially depending on what units were subjected to what water damage and at what time. So their individual issues of causation, the liability and damages which in my view after careful consideration would make a class action unmanageable.

I do agree with the defendants' assertion that the defenses if pled would be unique to the particular building and particular unit because of

the various inspections, the timing of the inspections, the thoroughness of the inspections, tenants conduct and the defendants' efforts responding to various water producing events or water damage. Each case is going to require individual consideration. So for those reasons I am denying class certification.

Are there any questions? I know I read through that pretty quickly. Where does that leave us now, let me ask a practical question from the plaintiffs' perspective?

MR. WILLIAMS: Well, Your Honor, at the moment it leaves us with the three individual cases that we had. There may well be more individual cases but they have not been filed obviously. We sought class certification. There's a lot of overlap between the merits discovery and the class discovery that we've done, so, to the extent the case continues, considerable merits discovery has been done.

THE COURT: So do we need a case scheduling order?

MR. WILLIAMS: Maybe we should caucus if the

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Court permits, allow us to talk about what's going to happen next and then we might ask for a conference with the Court.

THE COURT: And a trial date so we have something to shoot for.

MR. EAGLE: That's all agreeable.

THE COURT: Let me ask with respect to if there are additional filings that you please note on the civil information sheet they're related to this action. It may be that we have special assignment of them. I'm not sure how the prothonotary will handle them, but you need to make sure it's noted. Any other questions?

MR. EAGLE: Nothing.

THE COURT: Then I am going to leave the ball in your court. I will be happy to schedule a teleconference so you don't have to travel here and we can pick some dates to keep this litigation on track. All right. Thank you.

MR. EAGLE: Thank you.

MR. WILLIAMS: Thank you.

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STATE OF DELAWARE:

NEW CASTLE COUNTY:

I, Kim L. Haley, RPR, CSR, Official Court -Reporter of the Superior Court, State of Delaware, do hereby certify that the foregoing is an accurate transcript of the proceedings had, as reported by me in the Superior Court of the State of Delaware, in and for New Castle County, in the case therein stated, as the same remains of record in the Office of the Prothonotary at Wilmington, Delaware, and that I am neither counsel nor kin to any party or participant in said action nor interested in the outcome thereof.

 WITNESS	hand 2004		day	of

KIM L. HALEY
SUPERIOR COURT REPORTER